



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Governor Kay Ivey
Alabama State Capitol
Montgomery, Alabama 36130

Re: Alabama Death Row Inmate
Nathaniel Woods

Dear Governor Ivey:

I understand that efforts are underway to persuade you to grant Nathaniel Woods a reprieve from his death sentence, which is scheduled to be carried out on March 5, 2020. I write to you now to address the claims raised in the February 28 petition authored by Bart Starr, Jr., Elaena Starr, and Lauren Faraino, and the March 2 petition authored by J.D. Lloyd, one of Woods's current counsel. Indeed, to someone unfamiliar with the voluminous record in this case, the eleventh-hour claims raised in these petitions and in recent opinion pieces, many based on *allegations* in Woods's prior filings, could seem troubling. But a careful review of the *facts* of this case shows that the only injustice here is the death of three police officers in the line of duty. Just as a preliminary example, while Woods and his supporters contend that his trial counsel were ineffective for rejecting a plea deal of a non-capital conviction and a 20- to 25-year prison term, there is no evidence of any such offer in the record, and Woods's prosecutors—former Jefferson County District Attorney David Barber and Assistant District Attorney Mara Sirles Russell—vehemently and unequivocally deny that such an offer was ever made. In fact, I have attached to this letter affidavits from Mr. Barber and Ms. Russell concerning the baseless allegations that have been made against them and their colleagues. Thus, I urge you in the strongest possible terms not to grant a reprieve of Woods's death sentence.

The facts of this case are brutal. Four Birmingham police officers—Charles R. Bennett, Harley A. Chisholm III, Carlos “Curly” Owen, and Michael Collins—went to serve a warrant on Woods at his apartment *cum* drug house on June 17, 2004. Only Officer Collins lived to testify about the day's horrific events.

Earlier that morning, Officers Owens and Collins patrolled near Woods's residence on 18th Street, an area of Birmingham known for drug problems.¹ Woods's apartment was a drug house, as confirmed by his "doorman,"² Fernando Belser. According to Belser, Woods and his partner, Kerry "Nookie" Spencer, sold mostly crack cocaine to 100–150 customers per day.³ The dealers kept several guns inside the apartment, including Woods's small handgun and Spencer's SKS assault rifle.⁴

That morning, Woods stood inside his back screen door, cursing at Officer Owen and yelling for him to get off his property.⁵ Another person inside the apartment repeatedly pulled the window covering back and called, "F*** the police."⁶ For his part, Woods threatened to "f*** [Officer Owen] up."⁷ As Officer Collins testified, "It was just venom and hatred is the only way I can describe it. I've been a police officer for 12 years, but I mean it just shocked me because at most drug houses they don't want contact with the police because us being there and us being in the area or having contact with them hurts their business."⁸

The officers eventually checked Woods's name in the NCIC database and learned that he had an outstanding misdemeanor assault warrant in Fairfield. They printed a picture of Woods at the precinct to be certain and called their colleagues in Fairfield to confirm that the warrant remained outstanding.⁹

Marquita McClure, Woods's then-girlfriend, spent time at the apartment that morning. She overheard Woods and Spencer talking about the police after the officers left, saying, "I'll kill the m*****." ¹⁰ This was not the first time that she had heard the two men express animosity toward law enforcement. Once, she

1. *Woods v. State*, 13 So. 3d 1, 5 (Ala. Crim. App. 2007) (citing R. 492–93). "R." and "C." citations are to the trial transcript and the clerk's record on direct appeal, respectively.

2. Per Belser, a "doorman" determines who is allowed to enter a drug house and handles most of the transactions between the purchasers and the dealers. *Id.* at 9.

3. *Id.*

4. *Id.*

5. *Id.* at 5 (citing R. 495).

6. *Id.* (citing R. 501).

7. *Id.* (citing R. 501).

8. R. 498.

9. *Woods*, 13 So. 3d at 5–6.

10. R. 549.

heard Spencer say that he did not like Officer Owen because the officer had him locked up when he was seventeen.¹¹ As for Woods, McClure said, “We was having a normal conversation about the police and he was like, ‘I don’t like them MF’s. I need to kill them MF’s,’ but I still didn’t pay it no attention then, you know.”¹²

Shortly after 1 p.m., the four officers converged on Woods’s apartment. Officers Bennett and Chisholm covered the front door, while Officers Collins and Owen went to the rear. Woods, again standing behind his screen door, swore and told the officers to leave, but Officer Owen informed Woods that they had a warrant for his arrest and that Woods needed to come outside.¹³ Woods refused, warning the officers, “If you come in here, we’ll f*** you up.”¹⁴ Officer Chisolm even came around to the back to show Woods the NCIC printout, to no avail.¹⁵ Suddenly, Woods turned and ran deeper into the apartment, and the officers followed him through both doors.¹⁶ None of the officers had their weapons drawn, though Officer Chisholm carried a can of mace.¹⁷ Woods quickly surrendered, asking the officers not to spray him with mace.¹⁸ Fernando Belser, who was present at the time, testified that he never saw mace used.¹⁹

Less than a minute later, Officer Collins left through the back door, intending to go around the front and assist the others as they brought Woods outside. Instead, he heard shuffling behind him, then gunfire.²⁰ Belser testified that the shooter was Spencer, who was armed with an SKS assault rifle.²¹ As Officer Chisholm tried to retreat, Spencer shot him. Meanwhile, Woods attempted to escape through the front door. Opening it, Woods called to Spencer, “There’s someone else—we got another one right here,” and Spencer fired out the front.²² In the chaos, though he had been shot in the thigh, Officer Collins managed to take cover by his patrol car and radioed in a “double aught” call for all possible assistance. He saw Spencer standing in the

11. R. 550.

12. *Id.*

13. *Woods*, 13 So. 3d at 6–7.

14. *Id.* at 7 (citing R. 694).

15. *Id.*

16. *Id.*

17. R. 686, 774.

18. *Woods*, 13 So. 3d at 7 (citing R. 654).

19. R. 776.

20. R. 655–57.

21. R. 776–77.

22. R. 777–79.

doorway and shooting in his direction, and he later discovered that Spencer had shot a hole through his weapon holster.²³

By the time help arrived, the other three officers were dead. Officer Bennett was discovered outside the front door with a smoking hole in his face, while Officers Owen and Chisholm were found in the apartment. Each had died from multiple gunshot wounds: Officers Chisholm and Owen were shot in the back, while Officer Bennett was shot in the head from a foot or less away. The officers' bulletproof vests had been pierced, typical of damage sustained by high-powered rifle fire.²⁴ Responding officers found Spencer's assault rifle in the grass outside, a handgun in the bathtub, and two long guns in a bedroom.²⁵ As for Woods, he was found sitting on a nearby porch, apparently "very relaxed" and carrying two .22 caliber bullets in his pocket.²⁶ Spencer was pulled out of a neighbor's attic.²⁷ Woods's wallet was discovered in the neighbor's house, as was Officer Owen's service revolver.²⁸ Officer Bennett's Glock, located inches from his body, was found to be fully loaded.²⁹ Officer Chisholm's gun was still holstered.³⁰

Although Woods was not the shooter, he was hardly an innocent bystander. Michael Scott, a customer of Woods and Spencer's, testified that Woods claimed that he and Spencer "shot their asses."³¹ While awaiting trial, Woods told a deputy sheriff that the deputy was "hiding behind [his] badge just like the other three m*****" and promised to come looking for him if he won his case.³² Six months later, another deputy sheriff found a disturbing drawing on the wall of Woods's cell:

The drawing depicts two men shooting firearms. One man is shooting an assault rifle and three flaming skulls are depicted in the blasts from that weapon, and the other man is shooting two handguns. The drawing contains a heading at the top, "NATE \$ NOOKIE," and depicts street

23. R. 664; *Woods*, 13 So. 3d at 8.

24. *Woods*, 13 So. 3d at 8, 12–13.

25. *Id.* at 8.

26. *Id.* at 9.

27. *Id.*

28. *Id.* at 11.

29. *Id.* at 9, 12.

30. R. 1006.

31. *Woods*, 13 So. 3d at 11.

32. *Id.* at 14 (citing R. 1318).

signs at an intersection of “18th Street and Ensley.”³³

The next month, a third deputy sheriff found other concerning items in Woods’s cell:

After obtaining a search warrant, Deputy Crocker seized several items from the bunk where Woods slept. The items included a handwritten document and two copies each of two separate drawings depicting “Nate” and “Nookie” shooting on 18th Street. One of the drawings depicted flaming skulls coming from the blast of what appears to be an assault rifle and the other drawing depicted a police car with many bullet holes in it.³⁴

The document found in Woods’s cell, an adaptation of “I Drop Bombs Like Hiroshima” by Dr. Dre, was similarly themed and in Woods’s handwriting:

Seven execution styles murders
I have no remorse because I’m the f***in murderer
Haven’t you ever heard of a killa
I drop pigs like Kerry Spencer
So when I walk around strapped
One time bust the caps and watch pigs clapse
Snapp, adapt to this because I needs no adapter
this is just the first chapter.³⁵

The State offered the testimony of thirty-nine witnesses at Woods’s capital murder trial, including Michael Collins, twenty-five other law enforcement officers, and experts in firearms and handwriting. On October 10, 2005, a jury of Woods’s peers convicted him of four counts of capital murder: three counts of intentionally causing the death of a police officer in the line of duty, and one of killing two or more persons pursuant to one scheme or course of conduct.³⁶ Following a sentencing hearing, the jury recommended 10–2 that Woods be sentenced to death, and the trial court adopted that recommendation.³⁷ Woods’s conviction and sentence were upheld on direct appeal and throughout his state and federal postconviction proceedings.³⁸

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 4–5.

37. *Id.* at 5.

38. *Woods v. State*, 13 So. 3d 1 (Ala. Crim. App. 2007), *cert. denied*, *Woods v.*

Spencer was also convicted of capital murder and sentenced to death.³⁹ His case remains pending in the Northern District of Alabama in habeas, where it has been under the court's consideration since 2017.⁴⁰ Unfortunately, the speed with which these matters proceed through the courts is often beyond the State's control.

Woods and his supporters now raise a number of last-minute allegations, none of them meritorious. First, Woods alleges that his counsel were incompetent. As noted above, while Woods contends that his trial counsel let him down for encouraging him to go to trial rather than plead guilty to a non-capital offense in exchange for a 20- or 25-year sentence, there is simply no evidence of any such plea offer. The federal district court pointed this out in 2018.⁴¹ Moreover, as discussed in Mr. Barber's and Ms. Russell's enclosed affidavits, the attorneys who prosecuted Woods strenuously deny that such an offer was ever extended.

Woods and his supporters claim that his trial counsel, Cynthia Umstead and Rita Briles, were generally incompetent and too inexperienced to handle his case, citing as proof only the fact that the District Attorney, Mr. Barber, did not know Ms. Briles well.⁴² But Ms. Briles informed the trial court that she had twelve years' experience—an attorney needs only five to serve as counsel in a capital case—and Ms. Umstead explained that both of them met the ABA standards for appointed counsel, including having twelve hours of capital litigation training every other year.⁴³ None of Woods's claims of ineffective assistance of trial counsel have ever warranted relief.⁴⁴ As for the contention that trial counsel were ineffective for failing

Alabama, No. 09-7446 (Feb. 22, 2010) (direct appeal); *Woods v. State*, 221 So. 3d 1125 (Ala. Crim. App. 2016), *cert. denied*, *Ex parte Woods*, No. 1151254 (Ala. Oct. 21, 2016) (Rule 32); *Woods v. Stewart*, 2:16-cv-01758-LSC, 2018 WL 3455686 (N.D. Ala. July 18, 2018), *certificate of appealability denied*, *Woods v. Warden*, 18-14690-P, 2019 WL 5866719 (11th Cir. Feb. 22, 2019), *cert. denied*, *Woods v. Stewart*, 140 S. Ct. 67 (2019) (mem.) (habeas).

39. *Spencer v. State*, 58 So. 3d 215 (Ala. Crim. App. 2008).

40. *Spencer v. Dunn*, 2:16-cv-01877-KOB (N.D. Ala.).

41. *Woods*, 2018 WL 3455686, at *58.

42. Starr–Faraino Pet. 17.

43. *Woods*, 13 So. 3d at 37. Ms. Umstead was admitted to the Alabama Bar in 1988, while Ms. Briles was admitted in 1992.

44. *Id.* at 36–38 (failure to meet ABA guidelines and conduct adequate penalty-phase preparation); *Woods*, 221 So. 3d at 1136–37 (failure to hire handwriting expert), 1138–39 (failure to hire experts to test shirt for mace, test for latent fingerprints, and test shoe print), 1139–40 (failure to secure police records),

to challenge the warrant on which the officers went to arrest Woods, the documentation on which the officers relied was introduced at trial.⁴⁵ The Starr–Faraino petition claims, allegedly based on a statement of the sister of the deceased mother of Woods’s children, that the charge in Fairfield had been withdrawn before the day of the murders, but even if the warrant should no longer have been in Fairfield’s system, the Birmingham officers had a good-faith basis for relying on it.

Nor was Woods’s claim of ineffective assistance of appellate counsel deemed meritorious.⁴⁶ After moving for a new trial, Woods’s trial counsel withdrew, and the court appointed Glennon Threatt in their stead.⁴⁷ Woods takes issue with Mr. Threatt’s failure to apply for rehearing in the Court of Criminal Appeals or to petition the Alabama Supreme Court for certiorari, but Woods had no right to counsel past his initial appeal, as further appeals are considered discretionary.⁴⁸ Moreover, when Mr. Threatt withdrew, Woods was almost immediately picked up by the Equal Justice Initiative, which represented him in the United State Supreme Court and initiated his Rule 32 proceedings. EJI passed his case to LaJuana Davis and John Carroll in 2010. Ms. Davis has been on the Cumberland School of Law faculty since 2007 and has been employed by EJI and the Federal Defenders for the Middle District of Alabama. Judge Carroll spent nine years as the legal director of the Southern Poverty Law Center, served as a magistrate judge in the Middle District of Alabama for fourteen years, served as Cumberland’s dean from 2001–2013, and is now on faculty at the law school. The two represented Woods in the circuit court and the Court of Criminal Appeals, and Ms. Davis petitioned the Alabama Supreme Court for certiorari in 2016 before turning the matter over to J.D. Lloyd for federal habeas proceedings. Mr. Lloyd has represented Woods since that time, having been joined only in the last two months by counsel from Orrick, Herrington & Sutcliffe LLP. Notably, none of the Starr family, who have been so suddenly vocal about their belief that Woods was treated unfairly—Bart Starr, Jr., a non-practicing attorney; his wife, Elaena, who is not an attorney; and their daughter, Lauren Faraino, who was a corporate lawyer in New York from 2016–2018—have ever been of counsel

1140–41 (failure to present intoxication defense), 1141–42 (failure to request manslaughter instruction), 1143–44 (failure to investigate Woods’s and Spencer’s different roles in selling drugs and obtain transcript of Spencer’s trial).

45. C. 1657–58.

46. *Woods*, 221 So. 3d at 1144–47 (failure to file application for rehearing), 1147 (failure to appeal non-capital conviction), 1147–50 (laundry list of twenty-six claims counsel allegedly should have raised).

47. R. 1928.

48. *State v. Carruth*, 21 So. 3d 764, 767–70 (Ala. Crim. App. 2008).

in any of Woods's cases.⁴⁹

The Starr–Faraino petition alleges that “two key State’s witnesses” signed affidavits in February concerning the way that Assistant District Attorney Mara Sirles Russell, the detective, “and a so-called ‘memory expert’ coached, intimidated and baited them before their trial testimonies.”⁵⁰ But these witnesses are never identified, either in the Starr–Faraino petition or in Mr. Lloyd’s petition, nor are their supposed affidavits provided by any party. Ms. Russell emphatically denies that her office “coached” any of the witnesses, as set forth in her enclosed affidavit. Moreover, if there truly had been witness tampering in this case, then surely Woods’s qualified counsel would have discovered it in the last fifteen years.

Woods further alleges that his sentence is disproportionately harsh because he was not the shooter. But the evidence overwhelmingly shows that Woods was a willing participant in the murders. As the Court of Criminal Appeals explained on direct appeal:

The State established that Woods and Spencer had engaged in a hostile, profanity-laced argument with Officers Owen and Collins on the morning of the shootings, and that Woods threatened Officer Owen by stating: “Take off that badge and I will f*** you up.” Officer Sanders testified that Officer Chisholm had told him that Woods had taunted the police by saying, “You can’t get me,” and then running into the apartment. Marquita McClure and Markesha Williams testified that, after the police left, Woods stated that he would kill the police. Fernando Belser testified that Spencer said that if the police did not stop harassing him, he would “light ’em up,” and that Woods had said “[b]asically the same thing” Spencer had said. McClure asked Woods to leave the apartment with her, but Woods told her that he wanted to stay with Spencer in case the police came back.

Officer Collins testified that when the officers returned to the apartment to arrest Woods, a man who had been outside said that he wanted no part of what was to take place. When the officers told Woods that they had a warrant for his arrest and attempted to take him into custody, Woods cursed them and refused to come outside. He told the officers, “If you come in here, we’ll f*** you up.” He then turned and ran toward the back of the apartment, causing the officers to pursue him

49. See Starr–Faraino Pet. 1 (biographies of Elaena Starr and Lauren Faraino).

50. *Id.* at 15.

to the doorway between the kitchen and the living room. Belser had previously testified that no one went beyond the kitchen area of the apartment unless Woods or Spencer invited them, and he said that anyone who did so could “get hurt pretty bad” or “something could happen to them.” Spencer appeared with the assault rifle, and he fired it repeatedly, shooting Officers Owen and Chisholm multiple times. Woods told Spencer that another officer was at the front door, and Spencer turned and also shot Officer Bennett multiple times.

Spencer and Woods ran from the apartment together; they ran to John Prather’s house because Woods knew Prather. After they burst into Prather’s house, Spencer and Woods let Prather know that he would be compensated for letting them stay there, and Prather deduced that the pair had been involved in the shooting nearby. Woods told Spencer, “You came through for me,” Prather said. Michael Scott was inside Prather’s house when Woods and Spencer entered, and he heard Woods say something like, ““They f***ed with the wrong n*****. We shot their asses.”” Scott described Woods’s demeanor as calm, not upset, when he made this statement.⁵¹

The evidence adduced at trial clearly shows that while Woods may not have pulled the trigger, he was a full participant in the officer slayings.

The allegations in Woods’s eleventh-hour request for a reprieve do not undermine the heinous facts of this case. Woods was not an innocent bystander—he was a willing participant in this crime, even pointing to Officer Bennett so that Spencer could gun him down. Woods was, in fact, so cold that he wrote to Officer Chisholm’s widow, “I will forgive, but I [won’t] forget.”⁵²

In conclusion, Woods’s conviction and death sentence have been reviewed by state and federal judges on numerous occasions and have withstood all constitutional challenges. His trial and appeal were fair, and justice can only be achieved by the execution of his lawfully imposed sentence. The murder of three police officers deserves no sentence less than death. For the reasons set forth above, I ask that you deny Nathaniel Woods’s request for a reprieve of his execution, which the Alabama Supreme Court set for March 5, 2020.

51. *Woods v. State*, 13 So. 3d 1, 28–29 (Ala. Crim. App. 2007) (citations omitted).

52. C. 2160. The recipient felt threatened, particularly as her home address was not listed in the phonebook. R. 1902.

Sincerely,

A handwritten signature in black ink that reads "Steve Marshall". The signature is written in a cursive style with a large, sweeping initial "S".

Steve Marshall
Attorney General

Enclosures (2):

March 2, 2020, Affidavit of David Barber

March 2, 2020, Affidavit of Mara Sirles Russell

STATE OF ALABAMA

COUNTY OF JEFFERSON

State of Alabama,

PLAINTIFF,

VS.

Case Numbers:

CC-2004-4133-4135,4384

Nathaniel Woods,

DEFENDANT

Affidavit

Comes now, David Barber, being duly sworn, under oath and states as follows:

1. I served as the elected District Attorney of the 10th Judicial Circuit of Alabama (Birmingham Division) from November 1984 until September 2008.
2. During my tenure as District Attorney, I prosecuted Nathaniel Woods for the Capital Crimes of murder of three Birmingham Police Department officers, and the Attempted Murder of a fourth Birmingham Police Officer. Deputy District Attorney Mara Sirles Russell assisted me in the preparation for trial, and trial, of these cases. The trial by jury on all four charges commenced on October 3rd, 2005.
3. At no time during the time leading up to this trial, or during the course of this trial, did I or anyone to my knowledge or with my authorization, make an offer to the accused through his attorney(s) to dispose of these charges for an offer of a recommended sentence of 20-25 years in exchange for his Plea of Guilty to said charges. To the best of my recollection, knowledge, and belief, there was never 'any' discussion of an offer in this case in exchange for a guilty plea.



Affiant

Before me, the undersigned authority, on this day, personally appeared David Barber, who being by me duly sworn upon oath states that he had personal knowledge of the facts set forth in the foregoing Affidavit and is duly authorized to make such Affidavit, and that all of the facts stated therein are true and correct.

Subscribed and sworn to before me, April Christian Smith, on March 2, 2020

Notary Public in and for Alabama, County Jefferson

My commission expires: March 28, 2022

Notary Public: April Christian Smith

April Christian Smith
Notary Public, Alabama State At Large
My Commission Expires Mar. 28, 2022



STATE OF ALABAMA

COUNTY OF JEFFERSON

State of Alabama,

PLAINTIFF,

VS.

Case Numbers:

CC-2004-4133-4135,4384

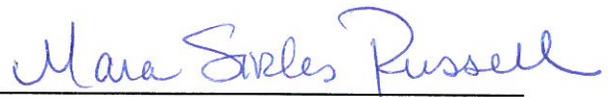
Nathaniel Woods,

DEFENDANT

Affidavit

Comes now, Mara Sirles Russell, being duly sworn, under oath and states as follows:

1. I am currently employed as a deputy district attorney at the Jefferson County, Alabama District Attorney's Office, 10th Judicial Circuit (Birmingham Division) and have been so employed since April 10, 2000.
2. From June 2004 until December 2005, I assisted then elected District Attorney David Barber with the preparation and trial of Nathaniel Woods for the Capital Crimes of murder of three Birmingham Police officers and the Attempted Murder of a fourth Birmingham Police officer.
3. At no time, leading up to the trial or during trial, did I make a plea offer of any sort to Nathaniel Woods either directly or indirectly through his attorney(s). Specifically, I did not make a 20-25 year sentence offer in exchange for his Guilty Plea to any or all of the charges, nor did anyone in my presence or to my knowledge make such an offer.
4. Further, while an interview specialist and statement analyst did provide support during the preparation for trial, at no time did I use the services of a 'memory expert' in order to 'bait' or 'put words in the mouth' of witnesses. Specifically, at no time did I or anyone under my direction or in my presence induce or attempt to induce any witness to testify falsely at trial.



Affiant

Before me, the undersigned authority, on this day, personally appeared Mara Sirles Russell, who being by me duly sworn upon oath states that he had personal knowledge of the facts set forth in the foregoing Affidavit and is duly authorized to make such Affidavit, and that all of the facts stated therein are true and correct.

Subscribed and sworn to before me, April Christian Smith, on March 2, 2020

Notary Public in and for Alabama, County Jefferson

My commission expires: March 28, 2022

Notary Public: April Christian Smith

April Christian Smith
Notary Public, Alabama State At Large
My Commission Expires Mar. 28, 2022

